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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/729,821	12/05/2003	Aloys Wobben	970054.450C1	8556

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EXAMINER

VERDIER, CHRISTOPHER M

ART UNIT PAPER NUMBER

3745

DATE MAILED: 10/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/729,821

Applicant(s)

WOBBEN, ALOYS

Examiner

Christopher Verdier

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 August 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) 4, 7 and 30 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5, 6 and 8-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 December 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Election/Restrictions

Applicant's election with traverse of species I, figures 1-2 and 8 in the reply filed on August 1, 2005 is acknowledged. The traversal is on the ground(s) that figures 9-10 are generic to all embodiments. This argument is persuasive. Therefore, the species of figures 1-2 and 8-10 are being examined. Applicant requested reconsideration of only this part of the restriction requirement. Therefore, claims 4, 7, and 30 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on August 1, 2005.

Receipt and entry of Applicant's Preliminary Amendment dated August 1, 2005 is acknowledged.

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the connecting cable (claim 17) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure

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must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

The abstract of the disclosure is objected to because it contains the phrase "The present invention" (line 1) which is implied and should be deleted, and because in line 2, -- is -- should be inserted after "apparatus". Correction is required. See MPEP § 608.01(b).

The disclosure is objected to because of the following informalities: Appropriate correction is required.

On page 3, line 14, -- of -- should be inserted after "feature".

On page 6, line 21, "20" should be change to -- 19 --.

On page 7, line 17, "line" should be changed to -- lines --.

On page 7, line 25, "a" should be changed to -- an --.

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The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required:

Claim 1, last two lines, which recite that the actuator is provided at least by an arcuate guide, has no antecedent basis in the specification for the underlined limitation.

Claim 3, last three lines, which recite that insofar as at at least one predetermined position in respect of the spacing between the outer peripheral edge of the projections, the projections touch a part of the switch, has no antecedent basis in the specification.

Claim 5, which recites that the plural switches are along the direction of movement and/or the length of the second actuating guide portion, has no antecedent basis in the specification.

Claim 23, which recites the wind power installation having at least one switching apparatus, has no antecedent basis in the specification for the underlined limitation.

Claim 24, which recites the rotor having at least one rotor blade, has no antecedent basis in the specification for the underlined limitation.

Claim 28, which recites the actuator is connected via a first sliding guide portion, has no antecedent basis in the specification.

Examiner's Suggestions to Claim Language

The following are suggestions to improve the clarity and precision of the claims:

In claim 1, line 4, "a" may be changed to -- the --.

In claim 13, line 2, -- portion -- may be inserted after "guide".

Claim Objections

Claims 1-3, 5-6, and 8-29 are objected to because of the following informalities:

Appropriate correction is required.

In claim 1, line 7, "a" should be changed to -- an --.

In claim 3, line 2, "is" should be changed to -- are --.

In claim 10, line 2, "the" (first occurrence) should be changed to -- a --.

In claim 16, line 3, "the" (second occurrence) should be changed to -- a --.

In claim 17, line 2, "the" should be changed to -- a --.

In claim 19, line 2, "the" should be changed to -- a --.

In claim 20, line 3, "the" (both occurrences) should be changed to -- a --.

In claim 28, line 10, "with" should be changed to -- which --.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-3, 5-6, and 8-29 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 1, line 6-7, "an actuator which is provided at least by a arcuate guide" is unclear as to scope, because the phrase "at least by a arcuate guide" renders the claim(s) indefinite because the claim(s) include(s) elements not actually disclosed (those encompassed by "at least by a arcuate guide" thereby rendering the scope of the claim(s)

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unascertainable. See MPEP § 2173.05(d). In claim 2, line 2, claim 3, line 2, claim 5, lines 2-3, and claim 6, line 3, “a second actuating guide portion” and “the second actuating guide portion” is unclear, because this appears to be the same element as the arcuate guide recited in claim 1, line 7. In claim 3, line 2, “projections” is a double recitation of the projections in claim 2, line 4. In claim 3, lines 3-5, “insofar as at at least one predetermined position in respect of the spacing between the outer peripheral edge of the projections, the projections touch a part of the switch” is unclear and inaccurate, because as seen in figures 1-2, for example, the projections 23 do not touch the switch 22 at a location between the projections. Additionally, “in respect of the spacing between the outer peripheral edge of the projections” is incomplete, because it does not specify what the spacing is relative to. In claim 19, line 2, “a cover hood” is unclear, because this appears to be one and the same element as the housing. In claim 20, line 3, claim 21, line 2, and claim 22, lines 2 and 3, “the cover hood” is unclear for the same reason. In claim 22, line 2, the phrase “in particular” is indefinite, because it is unclear whether the limitation(s) following the phrase are part of the claimed invention. See MPEP § 2173.05(d). In claim 24, line 2, “at least one rotor blade” is unclear if this is the same rotor blade in claim 1, or a different rotor blade. In claim 24, line 3, “the rotor blade” is unclear for the same reason. In claim 28, line 7, “a first sliding guide portion” is unclear, because this appears to be one and the same element as the first actuating guide. In claim 28, line 8, “a second actuating guide portion” is unclear, because this appears to be the same element as the first actuating guide recited in claim 28, line 7. In claim 29, line 2, “second actuating guide portion” is unclear for the same reason.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 5, 8-12, 15, 17, 19, 21, and 22, as far as they are definite and understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Nelson 4,962,290. Note the switching apparatus comprising an actuating shaft 24 which is rigidly connectable to a rotor blade, an actuator 32 and at least one switch 34, wherein the actuator and the switch are disposed in a housing 20 and the actuator is in the form of an actuator which is provided by an unnumbered arcuate guide and which is connected with a first actuating guide portion (the unnumbered center hub) to the actuating shaft, with plural switches 34 along the length of the arcuate guide, with a base plate 18 through which the actuating shaft passes, with the actuating shaft extending a predetermined length on the side of the base plate remote from the actuating guide and terminating in a connecting sleeve (the interior of the shaft to which screw 60 is secured), and a first carrier plate 27 which is mounted to the base plate and carries the switches, with a rotary sender in the form of a potentiometer actuated by the actuating shaft (see column 3, lines 15-17), with the rotary sender including a rotary sender shaft connected to the actuating shaft by a coupling, with an unnumbered connecting cable that is guided through a cable ducting 23 in the

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base plate 18, a cover hood 20 formed in one piece, having an unnumbered bottom opening closable by the base plate, with a sealing fit of the cover hood on the base plate, and a predetermined minimum wall thickness of the cover hood which is a shear resistant connection between the base plate and the cover hood. The recitation of “for arrangement in a rotor blade of a wind power installation” has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951). The recitation in claim 1, line 4 of “an actuating shaft which is rigidly connectable to a rotor blade” is a recitation of intended use. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. The shaft of Nelson is rigidly connectable to a rotor blade by welding or bonding, for example.

Claims 1-3, 5-6, 8, 10, 16, and 28-29, as far as they are definite and understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Foster 2,906,832. Note the switching apparatus comprising an actuating shaft 36 which is rigidly connectable to a rotor blade, an actuator 40 and at least one switch 15-20, wherein the actuator and the switch are disposed in a housing 32, 33 and the actuator is in the form of an actuator which is provided by an

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unnumbered arcuate guide (the outer periphery of 40) and which is connected with a first actuating guide portion (the unnumbered interior portion of 40) to the actuating shaft. The arcuate guide (which is considered to be the second actuating guide portion) arcuately embraces the shaft at a predetermined spacing, and faces with its inside towards the actuating shaft and on its outside has projections 41-52, 55-60 which upon movement and with suitable positioning cooperate with the switch, with the projections being in the form of an actuating track for the switch, with the projections touching a part of the switch, with plural switches 15-20 along the length of the arcuate guide, and plural actuating tracks (41-42, 55-60) for the plural switches, the tracks arranged mutually juxtaposed over the direction of movement and length of the arcuate guide, with a base plate (the upright vertical wall of 32, 33) through which the actuating shaft passes, and a first carrier plate 11 that is mounted to the base plate and carries the switches, and a bearing 34, 35 whereby the actuating shaft is guided through the base plate with the bearing. The actuator includes a first actuating guide (the outer periphery of 40), and a first sliding guide portion (the unnumbered interior portion of 40) connects the actuator to the actuating shaft. A second actuating guide portion 41-52, 55-60 at least partially surrounds the actuating shaft at a predetermined spacing, and is arcuate only and forms less than an entire circular member. The recitation of "for arrangement in a rotor blade of a wind power installation" has not been given patentable weight as above, because it occurs in the preamble of claims 1 and 28. The recitation in claim 1, line 4 of "an actuating shaft which is rigidly connectable to a rotor blade" and in claim 28, line 4 of "an actuating shaft which is rigidly connectable to the rotor blade" are recitations of intended use. The shaft of Foster is rigidly connectable to a rotor blade by welding or bonding, for example.

Claims 1, 5, 8, 10-11, 13, 15, 19, and 22, are far as they are definite and understood, are rejected under 35 U.S.C. 102(e) as being anticipated by Kirby 6,794,770. Note the switching apparatus comprising an actuating shaft 105/110 which is rigidly connectable to a rotor blade, an actuator 150 and at least one switch 125, 126, wherein the actuator and the switch are disposed in a housing 100 and the actuator is in the form of an actuator which is provided by an unnumbered arcuate guide near 150 and which is connected with a first actuating guide portion (the unnumbered center hub) to the actuating shaft, with plural switches 125, 126 along the length of the arcuate guide, with a base plate 112 through which the actuating shaft passes, and a first carrier plate 115a which is mounted to the base plate and carries the switches, with a rotary sender 130 in the form of a potentiometer actuated by the actuating shaft, with a common shaft 110/140 for the actuating guide and the rotary sender, a cover hood 115b formed in one piece, having an unnumbered bottom opening closable by a base plate 115a, with a predetermined minimum wall thickness of the cover hood which is a shear resistant connection between the base plate and the cover hood. The recitation of “for arrangement in a rotor blade of a wind power installation” has not been given patentable weight because the recitation occurs in the preamble. The recitation in claim 1, line 4 of “an actuating shaft which is rigidly connectable to a rotor blade” is a recitation of intended use. The shaft of Kirby is rigidly connectable to a rotor blade by welding or bonding, for example.

Claims 1-3, 5-6, 8-9, 19, 21-22, and 28-29, as far as they are definite and understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Lewis 843,902. Note the switching

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apparatus comprising an actuating shaft 13 which is rigidly connectable to a rotor blade, an actuator 12 and at least one switch 8, 9, wherein the actuator and the switch are disposed in a housing 1 and the actuator is in the form of an actuator which is provided by an unnumbered arcuate guide (the outer periphery of 12) and which is connected with a first actuating guide portion (the unnumbered interior portion of 12) to the actuating shaft. The arcuate guide (which is considered to be the second actuating guide portion) arcuately embraces the shaft at a predetermined spacing, and faces with its inside towards the actuating shaft and on its outside has projections 30 which upon movement and with suitable positioning cooperate with the switch, with the projections being in the form of an actuating track for the switch, with the projections touching a part of the switch, with plural switches 8, 9 along the length of the arcuate guide, and plural actuating tracks for the plural switches, the tracks arranged mutually juxtaposed over the direction of movement and length of the arcuate guide, with a base plate (the unnumbered right side wall in figure 4) through which the actuating shaft passes, with the actuating shaft extending a predetermined length on the side of the base plate remote from the actuating guide and terminating in a connecting sleeve 18, a cover hood 1 formed in one piece, having an unnumbered bottom opening closable by a base plate 3, with a sealing fit of the cover hood on the base plate, and a predetermined minimum wall thickness of the cover hood which is a shear resistant connection between the base plate and the cover hood. The actuator includes a first actuating guide (the outer periphery of 12), and a first sliding guide portion (the unnumbered interior portion of 12) connects the actuator to the actuating shaft. A second actuating guide portion (the outer periphery of 12) at least partially surrounds the actuating shaft at a predetermined spacing, and is arcuate only and forms less than an entire circular member. The

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recitation of “for arrangement in a rotor blade of a wind power installation” has not been given patentable weight as above, because it occurs in the preamble of claims 1 and 28. The recitation in claim 1, line 4 of “an actuating shaft which is rigidly connectable to a rotor blade” and in claim 28, line 4 of “an actuating shaft which is rigidly connectable to the rotor blade” are recitations of intended use. The shaft of Lewis is rigidly connectable to a rotor blade by welding or bonding, for example.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over either Nelson 4,962,290 or Kirby 6,794,770. Nelson and Kirby disclose switching apparatuses substantially as claimed as set forth above, including rotary senders in the form of respective potentiometers (unnumbered, and 130), but do not disclose that the potentiometer is fixed to a carrier plate.

Official Notice is taken that potentiometers are commonly mounted to components via carrier plates, for the purpose of providing a secure mounting of the potentiometer to the component.

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to mount the potentiometer of either Nelson or Kirby by a carrier plate, for the purpose of providing a secure mounting of the potentiometer.

Claims 18 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over either Nelson 4,962,290 or Kirby 6,794,770. Nelson and Kirby disclose switching apparatuses substantially as claimed as set forth above, each including a base plate and a cover hood, but do not disclose a plug connector fixed to the outside of the switching apparatus (claim 18), and do not disclose a heating source within the internal space of the cover hood of the switching apparatus (claim 20).

Official Notice is taken that plug connectors are commonly fixed to the outside of rotary actuated switches, for the purpose of allowing for electrical connection of the switches. Official Notice is taken that rotary actuated switches commonly employ heating sources inside the housing of the switch, for the purpose of allowing the switches to be warmed to a higher temperature.

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to form the switching apparatus of either Nelson or Kirby such that a plug connector is fixed to the outside of the rotary switch, for the purpose of allowing for electrical connection of the switches. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to form the switching apparatus of either Nelson or Kirby

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such that it includes a heating source inside the housing of the switch, for the purpose of allowing the switch to be warmed to a higher temperature.

Prior Art

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Mueller, Lace, and Ordway are cited to show switching apparatuses with actuating shafts, and arcuate guide portions. These references could also have been applied as they anticipate at least claim 1, but are not applied at this time to avoid multiple rejections.

Anderson is cited to show a cam-actuated switch.

Swiss Patents 164,626 and 333,331, and German Patent 714,140 are cited to show rotary actuated switches with first actuating guide portions and arcuate guides.

Pruden is cited to show a blade pitch angle determination system.

Allowable Subject Matter

Claims 23-27 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

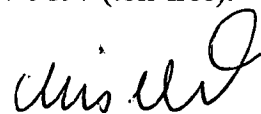
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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher Verdier whose telephone number is (571) 272-4824. The examiner can normally be reached on Monday-Friday from 10:00-6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Edward K. Look can be reached on (571) 272-4820. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

C.V.
October 16, 2005



Christopher Verdier
Primary Examiner
Art Unit 3745